

ESCONDIDO POLICE DEPARTMENT INSTRUCTION		DATE: 08-14-19	NO: 1.51 ADMINISTRATION
TO: ALL PERSONNEL		SUBJECT: USE OF RECORDING DEVICES	
ORIGIN: CHIEF OF POLICE		RETAIN: UNTIL FURTHER NOTICE	

This Department Instruction supersedes Department Instruction 1.51, dated February 14, 2018.

I. PURPOSE

This Instruction establishes policy and procedures for the use of portable digital recording devices and the storage of captured video, photographs, and audio.

II. GENERAL

Digital recording devices are valuable tools for law enforcement officers to capture audio, photographs, and video of their activities and to gather evidence during the performance of their law enforcement duties. The devices also provide an effective training and self-evaluation resource for individual officers and their supervisors. California Penal Code section 633 recognizes that a law enforcement officer, when acting within the scope of his/her authority, may record any communication that can be lawfully overheard.

III. DEFINITIONS

- A. Confidential Communication – any communication carried on in circumstances as may reasonably indicate that any party to the communication desires it to be confined to the parties thereto, but excludes a communication made in a public gathering or in any legislative, judicial, executive or administrative proceeding open to the public, or in any other circumstance in which the parties to the communication may reasonably expect that the communication may be overheard or recorded.
- B. Evidentiary data – a recording of an incident or encounter that could prove useful for investigative purposes, including, but not limited to, a crime, an arrest or citation, a search, a use of force, or a confrontational encounter with a member of the public.
- C. Digital Recording Device – any portable equipment designed or used to capture audio, photographs, or video in an electronic format such as body video cameras, audio recorders and smart phones.
- D. Non-evidentiary data – a recording that does not necessarily have value to aid in an investigation or prosecution, such as data of an incident or encounter that does not lead to an arrest or citation, or data of general activities the officer might perform while on duty.

- E. Uniformed Officers – All Department personnel in marked uniform attire including Sworn Officers, Reserve Officers, Community Service Officers, Custody Transport Officers, and plain clothes officers when wearing the load-bearing vest or other tactical equipment with police insignia who are issued Department digital recording devices.
- F. Video Administrator – A supervisor(s) designated by the Chief of Police to maintain digital recording equipment and digital video files, provide training to equipment users, and manage the retention, dissemination and deletion of digital recordings.

IV. POLICY

A. Training & Use

- 1. Only digital recording devices issued or approved by the Department shall be used. In exceptional circumstances, an officer may use a personal recording device in the course and scope of his/her duties, but any information recorded shall be retained following the same procedures provided for City-issued equipment.
- 2. Officers shall receive training in the use, care and maintenance of portable digital recording devices.
- 3. Officers should ensure that their issued digital recording devices are properly charged and that there is sufficient available memory at the beginning of their shift.
- 4. Digital video recording devices shall be worn in a manner that maximizes the recordable viewing area and shall be sufficiently anchored and/or tethered to prevent loss of the device.
- 5. Officers shall only use Department-issued digital recording devices in the course and scope of their authority as a law enforcement officer.
- 6. The current digital video recording system does not allow officers to delete any recorded data. Only designated video administrators may delete data, following guidelines established in this policy.
- 7. Officers shall have discretion in notifying the public that their body-worn camera is activated.

B. Recording Policy

- 1. Uniformed officers shall activate their issued digital recording device, when participating in the following scenarios:

- a. Responding to radio calls, except for routine property report calls.
- b. Covering another City employee or law enforcement officer, including, but not limited to, CSOs and Parking Enforcement Officers during an enforcement contact.
- c. Citizen contacts such as traffic stops, pedestrian stops, and field interviews.
- d. During the execution of a search or arrest warrant, Fourth Amendment waiver search, and other contacts that may lead to an arrest.
- e. Arrests or incidents where force is likely to be used.
- f. **Upon initiating or joining a vehicle pursuit.**
- g. Suspect, victim and witness interviews on felony crimes.
- h. Upon arrival at a collision scene, and while obtaining statements and evidence.
- i. **Upon initiating or joining a foot pursuit.**

2. Exceptions to digital recording policy.
 - a. Canine Unit and Tactical Operations Unit members will follow specific guidance, released in Department Order format, on their use of a digital recording device.
 - b. Plain clothes officers working undercover or on sensitive assignments are exempt from this policy.
3. Officers may stop their recording when the officer believes the event will not produce evidentiary data, or when a citizen requests to remain anonymous.
4. Officers may only mute the audio on their body-worn camera when discussing tactical strategy, or when having a conversation about job performance with a supervisor or subordinate. The audio must be reactivated immediately after such conversation. Audio shall not be muted any time an officer is interacting with a member of the public.
5. Officer safety remains paramount. Activation of any digital recording device shall not divert the officer's attention from the task at hand. There may be circumstances when events occur so quickly that an officer does not have time to properly activate the recording device.

C. Prohibitions

1. Officers shall not record any confidential communication between a person in custody and his/her attorney, a medical provider or a member of the clergy.
2. **Officers shall not record contacts involving known confidential informants unless directed by a supervisor of the Special Investigations Division.**
3. Officers shall not record any confidential communication between Department personnel without the prior knowledge and consent of all persons recorded. But this prohibition shall not limit a law enforcement officer's authority to record any communication otherwise allowed under state or federal law.
4. Officers shall not use Department-issued digital recording devices for personal use.
5. Officers shall not tamper with or dismantle any hardware or software component of any digital recording device.
6. Officers shall only save recorded data on Department-authorized computers. No recorded data may be saved to any public or personal website or onto any public or personal computer, disc or portable storage device, or reproduced or released in any format to the public or to the Media without express authorization from the Chief of Police or his designee. Officers shall not download or copy any digital recording files without submitting a request to the appropriate Division. Violation of these prohibitions can result in discipline, up to and including termination.
7. Officers shall not view videos taken by other Department personnel unless required for investigative purposes, including report writing or with a supervisor's express permission.
8. Supervisors may use digitally recorded data for training purposes with the approval of the Chief of Police or his designee.

V. PROCEDURES

A. Recorded Data

1. Evidentiary video shall be retained until the matter is resolved, but shall be retained for a minimum of two years, under the following circumstances:

- a. The recording is of an incident involving an officer-involved shooting or the use of force.
 - b. The recording is of an incident that leads to the detention or arrest of an individual.
 - c. The recording is relevant to a formal or informal complaint against a law enforcement officer or a law enforcement agency.
 - d. The recording is relevant to claims filed or pending litigation.
2. If video is relevant to a criminal prosecution, it shall be retained for the same time as all other evidence in the case, and shall be deleted only when it is no longer needed in the prosecution of the case and any subsequent hearings or appeals.
3. Video deemed to be non-evidentiary in nature shall be saved for a minimum of 60 days.
4. It is the responsibility of the officer who records video to categorize and electronically label files with the appropriate data:
 - a. Video files related to a case number shall be labeled with the eight-digit case number.
 - b. Video files associated with an incident number shall be labeled with the nine-digit incident number.
 - c. All other videos shall be entered into a miscellaneous or training category as appropriate.
 - d. All videos shall be entered into the appropriate category, as outlined in Department training.
5. Records Division personnel shall be responsible for transmitting body-worn video footage to the District Attorney's office at the time an arrest case is sent, following established sharing procedures.
6. The Records Manager shall follow established public records request protocols when redacting and/or releasing body-worn video.
7. All recordings, including video, photographs and audio files shall be saved to the Department's designated media storage system by the officer who captured the data prior to ending his/her shift.

- a. Supervisors retain authority to take possession of any City-issued equipment as part of any investigation including a use of force or other serious incident. When exercising such authority, the supervisor shall save the recorded information into the Department's designated media storage system or transfer the custody of the recording device to an authorized Forensic or Evidence Technician.
- b. Forensic and Evidence Technicians have the same authority and responsibility as supervisors when acting in the regular performance of their duties and processing digital data.
- c. In any case where a supervisor or Forensic/Evidence Technician takes possession of an officer's digital recording device as part of an investigation, the supervisor or Forensic/Evidence Technician shall return the digital recording device to the affected officer as soon as practical after saving any captured video into the Department's designated media storage system. Should the digital video recorder itself be considered evidence in a case and need to be impounded, the supervisor or evidence technician collecting the device shall make arrangements to provide the officer with a replacement unit as soon as reasonably practical.

8. All videos, photos, and audio files shall be saved using the approved Department format.

B. Report Writing

1. In instances where video is obtained and a written report or citation is generated, the officer will document in the report or on the back of the citation that video exists and the video was downloaded.
2. Officers may review video from their device prior to submitting a written document on the incident or being interviewed, but the Chief of Police or his designee may restrict access that could compromise an investigation.

VI. ADMINISTRATION

- A. The Records Manager is designated as the Custodian of Records for all digital recording device data files.
- B. The Records Manager shall permanently retain records or logs of access and deletion of data from digital recording devices. It is the Video Administrator's responsibility to provide those records.
- C. Recordings made pursuant to this policy are Department records and may only be released in accordance with this policy or by law.

- D. A Video Administrator may delete any data files that contain information that is not ordinarily retained in the normal course of business, thus has no value to the Department, including but not limited to accidental recordings, video, photos, and audio files related to camera training or testing, and videos with no specific law enforcement related content.
- E. The Video Administrator shall conduct monthly audits to ensure officers are adhering to this policy.
- F. Body-worn video footage will not be routinely viewed to identify compliance with other Department Instructions and policies. Footage may be utilized when investigating formal complaints or identified performance issues.